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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09 419,927	10 18 1999	MARINUS BLAABJERG SORENSEN	MCG046US	2102

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EXAMINER

HAMUD, FOZIA M

ART UNIT	PAPER NUMBER
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1647

DATE MAILED: 01 04 2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
**09/419,927**

Applicant(s)  
**Sorensoen et al.**

Examiner  
**Fozia Hamud**

Art Unit  
**1647**



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Nov 14, 2001
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 4-9 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 4-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some\* c) ☐ None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \*See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

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### DETAILED ACTION

1. Receipt of Applicant's arguments and amendments canceling claims 1-3 and adding new claims 4-9, filed on 14 November 2001 in Paper No. 8 is acknowledged.

2. The following previous rejections and objections are withdrawn in light of Applicants amendments filed in Paper No.8, 11/14/01.

(I) Objection to the title.

(ii) All the rejections of claim 1.

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

#### *New rejections necessitated by Applicant's amendments:*

(Applicants have made no arguments relevant to the following new rejections).

#### *Claim Rejections - 35 U.S.C. § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 4-9 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4a Claim 4 recites "..., said protein *being absent* a tetra-hydroxyproline block *and* in a pharmaceutically active concentration for cytotoxic enhancement of lymphocytes" being absent

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the protein lacks a tetra-hydroxyproline block, or does it mean something else? also "and" before "in a pharmaceutically active concentration for cytotoxic enhancement of lymphocytes", makes the claim more confusing. Furthermore, instant specification does not define "a pharmaceutically active concentration" how much is said concentration, what units is it expressed in, how is it pharmaceutically active, is it active in humans, in laboratory animals or in farm animals? Applicants must recite the specific concentration of said composition supported by the specification which Applicants consider to be "pharmaceutically active". Also there is no definition for "cytotoxic enhancement of lymphocytes" in the specification, what does "cytotoxic enhancement of lymphocytes" mean and how is it accomplished? Applicants must clarify the meaning of this phrase. Appropriate correction is required.

Claims 5-9 are also vague and indefinite so long as they depend on claim 4 for the limitation set forth directly above.

***Claim Rejections - 35 U.S.C. § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5a. Claims 4-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Li et al, (1989).

Li et al disclose an extensin isolated from sugar beet cell suspension which lacks the diagnostic tetra-hydroxyproline block (abstract). The researchers disclose that the sugar beet extensin shares

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which the sugar beet extensin splits the tetra-hydroxyproline block: Ser-Hyp-Hyp-[X]-Hyp-Hyp-Thr-Hyp-Val-Tyr-Lys, where [X] is Val-His-Glu/Lys-Tyr-Pro, (see page 327, column 2 and page 332). Therefore, the Li et al reference meets all the limitations recited in instant claims 4-9. With respect to the limitation that the claimed extensin is in a pharmaceutically active concentration sufficient for cytotoxic enhancement of lymphocytes, the Li et al reference does not address this functional limitation, however, this functional limitation would be deemed inherent in the composition disclosed by Li et al. With respect to claims 7-9, the extensin disclosed by Li et al is isolated from sugar beet, (page 328, second paragraph of column 2), therefore, it inherently comprises sugar beet pectin, sugar beet fiber and pectic polysaccharides, because "pectin" is a complex of colloidal polysaccharides found in the primary cell walls of dicotyledons, and since sugar beet is a dicotyledon it would inherently comprise these polysaccharides. In re Best (562 F.2d 1252, 1255, 195 USPQ 430,433-34 (CCPA 1977)).

Therefore Li's reference anticipates the instant claims 4-9 in the absence of any evidence to the contrary.

### **Conclusion**

6. No claim is allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS**

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mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

***Advisory Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fozia Hamud whose telephone number is (703) 308-8891. The examiner can normally be reached on Monday, Wednesday and Thursday from 6:30AM to 4:00PM (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz, can be reached on (703) 308-4623.

Official papers filed by fax should be directed to (703) 308-4227. Faxed draft or informal communications with the examiner should be directed to (703) 308-0294.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Fozia Hamud  
Patent Examiner  
Art Unit 1647  
03 January 2002

*Gary L. Kunz*  
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